

APPROVED
MEETING MINUTES OF THE
CITY OF ALAMEDA PLANNING BOARD
MONDAY, OCTOBER 12, 2009
7: 00 p.m.

1. CONVENE: President Ezzy Ashcraft called the meeting to order at 7:10 p.m.
2. FLAG SALUTE: Vice-President Autorino
3. ROLL CALL: PRESENT: President Ezzy Ashcraft, Vice-President Autorino, Board members Cunningham, Lynch, and Zuppan.
ABSENT: Board Members Cook and Kohlstrand
4. MINUTES: Minutes from the meeting of August 24, 2009 Motioned by Board member Cunningham and seconded by Board Member Zuppan to approve the minutes as Amended: Motion passes 5-0.
Minutes from the meeting of September 10, 2009 (Pending)
Minutes from the meeting of September 28, 2009 (Pending)

5. AGENDA CHANGES AND DISCUSSION:
None.

6. STAFF COMMUNICATIONS:

6-A Future Agendas
Staff presented an overview of the upcoming projects.

6-B Zoning Administrator Report
The Zoning Administrator hearing on October 6, 2009 was canceled.

7. ORAL COMMUNICATIONS:
None.

8. CONSENT CALENDAR:
Board member Cunningham motioned, seconded by Vice-President Autorino to approve the consent calendar and move all items to a future Planning Board hearing. Motion passes 5-0.

8-A Draft Master Street Tree Plan: Consideration of a new Citywide Master Street Tree Plan and recommendation to the City Council.

8-B Use Permit – PLN09-0054 Applicant – Trader Joes.
A request to allow extended hours for truck deliveries from 6:00 AM to 11:00 PM.
Use Permit – PLN09-0073 Applicant – Big 5 Sporting Goods.
A request to allow extended hours for truck deliveries 24 hours a day for two days a week.

Use Permit – PLN09-0259 Applicant – Petco.

A request to allow extended hours for truck deliveries between 3:00 AM and 7:00 AM on Wednesdays and Fridays

Use Permit - PLN09-0330- Applicant: Kohl's

A request to allow store operations between the hours of 6:00 AM. and 12:00 AM.

- 8-C Variance and Major Design Review – PLN08-0211, 1700 Park Street (Former Cavanaugh Motor Site)** Proposed commercial buildings, including a two-story structure, remodel of existing buildings and a parking lot to be accessed from Buena Vista Avenue. The project requires a variance for a reduction in the required number of off-street parking spaces, modification to the ratio of standard to compact parking spaces, reduction in the depth of landscape areas, and modification to the distance vehicles may encroach into landscape areas.

9. REGULAR AGENDA ITEMS:

- 9-A Use Permit – PLN09-0253 – 1623 Park Street – Abdulmalik Harbi.** The applicant requests use permit approval to operate a convenience store within 300 ' of a residential zone district. The proposed convenience store will offer gift items, snacks, beverages, novelties, candy, groceries, printed materials, and some tobacco products.

Staff presented the project.

President Ezzy Ashcraft explained to the members of the public that a request to continue the project to another meeting date had been submitted by a petitioner. By consensus, the Board did not take up the request to continue the item.

Vice-President Autorino observed that the retail space was already partially stocked and asked if the items were representative of the items that would be sold at the site. Staff confirmed this.

Mr. King, the applicant's legal counsel, spoke in support of the project. He explained that the applicant had presented his revised business proposal to the Park Street Business Association (PSBA) and had received a favorable vote from the PSBA Board. Furthermore, he pointed out that the submitted petitions do not generally complain about the competition, but rather noted opposition to the proposed store.

Vice-President Autorino asked for clarification on the calculation of the floor area dedicated to tobacco products as shown on the proposed floor plan. Staff explained that the shelving area dedicated to cigarette sales is 1.5 % of the total area of the sales floor.

President Ezzy Ashcraft asked what the applicant had spent \$40,000.00 on. Mr. King responded that the applicant had refurbished the retail space and had bought store furniture.

Ms. Sekhon, petitioner, spoke against the proposed project on the basis that this store would contain products that other stores in close proximity already carry. She opposes the sale of tobacco for the population's health concerns and stated that her Seven Eleven Store at Buena Vista Avenue and Oak Street store tries to not promote it. She is concerned that a concentration of liquor or tobacco stores would make Alameda look like other communities

and stated that parking is already insufficient in the area.

Mr. Rai, Alameda resident, opposed the proposed project and supported the previous speaker's points. He proposed that the City should regulate the number of such businesses.

Mr. Sekhon, petitioner and owner of the Seven Eleven store at Buena Vista Avenue and Oak Street, objects to the proposed use on the basis that the City does not need more convenience stores. He also pointed out that almost 900 petitioners objected to the use, and their voice should carry some weight. He opposes the sale of tobacco products and suggested that the proposed convenience store would sell items that would support drug use.

Board Member Lynch asked for a clarification of the term "novelty items", which were goods Mr. Sekhon stated would be offered at this establishment and such items are used for tobacco as well as drug use.

Mr. Faizi, Alameda resident, opposed a store that focuses on the sale of tobacco products.

Mr. Sultani, Alameda resident, opposed a store that focuses on the sale of tobacco products and that would impact Alameda children.

Mr. Salhi, Alameda resident, is concerned about double-parking in front of the convenience store, which may be hazardous to pedestrians. He is also concerned that the proposed use would not improve the neighborhood.

Mr. Satar, Alameda resident, opposed the project, as the new use would not really attract new business, but would only pull business from existing businesses in the area. He suggested a better use for that space would be a community use.

President Ezzy Ashcraft closed the public comment period.

Mr. King, the applicant's legal counsel, spoke to the previous speakers' efforts to focus on the wrong assumption that the proposed use would be a tobacco store. The proposed use is a convenience store that sells some tobacco products amongst other items. He then stated that the previous speakers seem to want to direct the type of competition on Park Street. He concluded that it is not the purpose of the Planning Board to steer or guide business competition on Park Street, but to review the uses. He pointed out that the business owners speaking in opposition to this request sell tobacco products in their stores.

President Ezzy Ashcraft asked for clarification on the nature of "novelties and gift items" that would be offered for sale within the establishment.

Mr. Harbi, the applicant, described that "novelties and gift items" are perfumes, colognes, and such items that might be found in 99 cent stores. He stated that he is not interested in selling smoking paraphernalia. He also pointed out that he has a successful family-owned business with a good track record in Oakland.

Vice-President Autorino asked what prompted the applicant to open a store in Alameda that offers a different selection of merchandise than one might find in other stores in the community.

Mr. Harbi stated that he was interested in locating to Alameda as he thought his product selection would benefit the Park Street district.

Board Member Lynch stated that the future development of the Park Street district should be given more consideration, but from a land-use perspective the proposed use meets all

regulations. He is concerned that the “novelties” would contain items commonly considered drug paraphernalia.

Board member Cunningham explained that he would not like the Planning Board to make a recommendation that would regulate the type of business on Park Street. He pointed out that it would rather befit the PSBA to provide recommendations of such a nature and that if PSBA opposed the project, the Planning Board would have received comments from them. He considers competition healthy, but is concerned about the potential for the sale of drug paraphernalia items. He asked if staff could provide guidance on adding a condition of approval that the sale of such items would not be permitted. Farimah Faiz, Planning Board legal counsel, provided such a condition.

Board Member Lynch raised his concern with drafting conditions of approval that were too specific and not aligned with the City’s Municipal Code, but wanted to prohibit the sale of paraphernalia typically associated with use of illegal substances.

Board Member Zuppan asked for clarification as to what floor area would be dedicated to tobacco and whether the project would come back to the Planning Board for review, should the product mix change and floor area dedications change. Staff clarified the Municipal Code limitations to tobacco sales and dedicated floor area and the project proposal.

Vice-President Autorino asked why the Planning Board is reviewing this project. Staff explained that the project is before the Planning Board because the Municipal Code states that a convenience store within 300’ of a residential zoning district requires a use permit. Staff clarified that the code does not call for a review of the number of existing businesses and provided the example that had the project been a few doors over, there would not have been a need for a use permit. Staff recommended that the project be approved, as the project would have a minimal impact on the residential district, some impact on traffic and parking but not at significant levels and not enough to cause serious concern.

President Ezzy Ashcraft appreciated that the applicant had made revisions to the scope of the project and for addressing community concerns. She stated that the Planning Board would not base a decision on the merits of this project on the fact that similar businesses exist in the area. She pointed out that free enterprise is essential to a thriving community. She rejected the idea that the addition of another convenience store would attract more crime. She referred to Findings number 3 and number 4 in the draft resolution. She found it difficult to see how the proposed use would add to the mix of businesses at that location and how the proposed business would benefit the other businesses. As the property is part of the North of Lincoln area, which will be redeveloped in the future, she recommended that the Planning Board add a condition that would limit the use permit of the business to one year. The applicant was agreeable to a Planning Board review within a year of operation to ensure compliance with the conditions of approval.

Vice-President Autorino stated that if the Planning Board was reviewing whether the project was appropriate for the area he would deny the application. However, since the Planning Board was reviewing the impact of the proposed use on the residential district, he stated the project likely did not have an impact and therefore felt compelled to approve the project. He added that it would be unfair to prevent a business owner from continuing a successful business and did not feel that a condition limiting the business to a year of operation would be permissible.

Board member Cunningham seconded Vice-President Autorino’s comments.

Board Member Lynch agreed with Vice-President Autorino’s and Board member

Cunningham's comments. He feels uncomfortable making a determination on the number of a particular type of business that would be permitted in the district or area. He stated that he supports the proposal, because it fits within the existing Municipal Code. He supported a condition of approval prohibiting the sale of paraphernalia typically associated with use of illegal substances. The applicant was amenable to this condition.

Board Member Zuppan did not support limiting the business to a year. She stated that she had difficulty making Finding number 3 as proposed. She asked that staff clarify how the conclusion was drawn that parking would not be negatively impacted. Staff explained the Municipal Code provisions that exempt this project from having to provide more parking, and described the traffic analysis, which utilizes the industry standards as set by the Institute of Traffic Engineers.

President Ezzy Ashcraft asked that condition 7 be revised to read: "The project shall be reviewed for compliance with all conditions of approval and any impacts on residential districts one year after obtaining the certificate of occupancy and commencing the business.", and that condition 9 be revised to read "Prior to any expansion of display areas beyond what is shown on the submitted plans, the applicant shall submit plans for review and approval by Planning staff, and if necessary, be reviewed by the Planning Board through the Use Permit amendment process."

Board member Cunningham asked for clarification on the floor area calculations.

Board member Cunningham moved, seconded by Board Member Lynch, to approve the use permit application subject to the changes to conditions 7 and 9 recommended by President Ezzy Ashcraft and, an additional condition prohibiting the sale of paraphernalia typically associated with the use of illegal substances. The motion passes 4-1-2.

10. WRITTEN COMMUNICATIONS:

None.

11. BOARD COMMUNICATIONS:

Staff explained that Board Members have been given a map indicating a 500' radius from property they own. This map shows the area that would require a Board Member to recuse themselves from projects located within that boundary.

12. ADJOURNMENT:

9:07 p.m.